No. 89-863



Supreme Court, U.S. FILED

DEC 22 1989

IN THE SUPREME COURT OF THE UNITED SEPATES ANIOL, JR. October Term, 1989

MYRON HARPER AND JANE HARPER. Petitioners.

V.

FEDERAL LAND BANK OF SPOKANE et al., Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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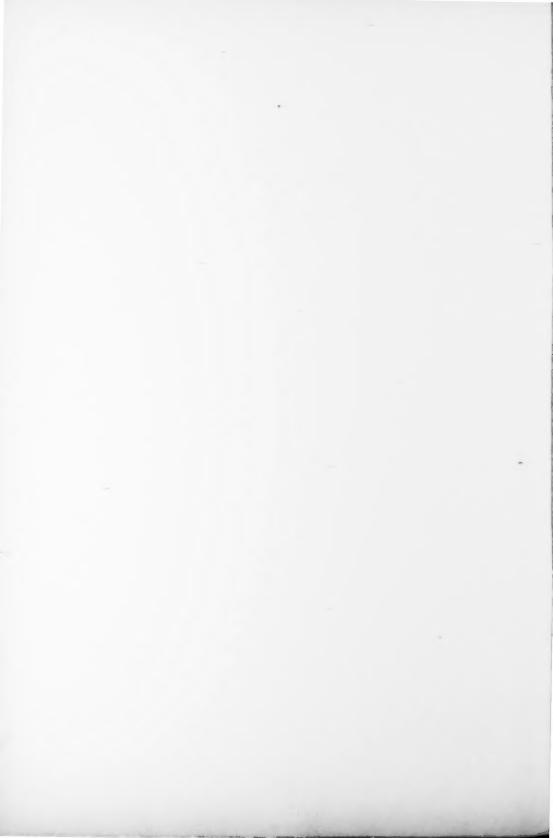
Counsel for Respondents Federal Land Bank of Spokane, Willamette **Production Credit** Association, and Kenneth P. Krueger

LISTING PURSUANT TO COURT RULE 28.1

Respondent Federal Land Bank of Spokane, a federally chartered entity, was a predecessor of the current Farm Credit Bank of Spokane, which was created by merger of the Federal Land Bank and the Federal Intermediate Credit Bank of Spokane. The Farm Credit Bank of Spokane provides loans to borrowers in the Twelfth Farm Credit District (Oregon, Washington, Idaho, Montana, and Alaska).

Willamette Production Credit Association has been liquidated. Its assets have been transferred to Farm Credit Bank of Spokane, as successor to the Federal Intermediate Credit Bank.

The Farm Credit Bank of Spokane, like its predecessor entities, was established under the Farm Credit Act of 1971, as amended.



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Petitioners Myson S. and Jane Harper filed their petition for certiorari with this Court on November 22, 1989. They noted an apparent conflict between the disposition of this case by the Ninth Circuit court of Appeals (Harper v. Federal Land Bank of Spokane, 878 F2d 1172 (9th Cir 1989) (rehearing and hearing en banc denied)); and that of the Eighth Circuit Court of Appeals in Zajac v. Federal Land Bank of St. Paul, 887 F2d 844 (8th Cir 1989). The court in Harper found no private right of action implicit in the Agricultural Credit Act of 1987 (Pub L No 100-233, 101 Stat 1568) (878 F2d at 1173, 1177). In Zajac, the Eighth Circuit did discern an implied right to sue (887 F2d at 856). Petitioners then stated, "[W]here there is both a conflict among courts of appeal and an important legal question, this court has exercised its discretion and granted review by writ of certiorari" (petition p 7).

The Federal Land Bank of St. Paul suggested the appropriateness of a rehearing en banc of Zajac. By order of December 7, 1989 (see Appendix to this brief), the Eighth Circuit granted rehearing en banc and expressly vacated the earlier panel opinion and judgment.

As to the only issue which petitioners bring before this Court, any conflict that existed between the circuits has dissolved. The Court should deny the petition or defer ruling on the petition until the Eighth Circuit Court of Appeals has handed down its en banc decision in *Zajac*.

Respectfully submitted,

JAMES N. WESTWOOD (Counsel of Record) MILLER, NASH, WIENER, HAGER & CARLSEN 111 S.W. Fifth Avenue Portland, Oregon 97204 (503) 224-5858

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Counsel for Respondents
Federal Land Bank of
Spokane, Willamette
Production Credit
Association, and
Kenneth P. Krueger

APPENDIX

United States Court of Appeals

FOR THE EIGHTH CIRCUIT

No. 88-5353ND

Raymond P. Zajac and Helen Ann Zajac,

> Appeal from the United States District Court for the District of North Dakota

Appellants.

.

Federal Land Bank of St. Paul,

VS.

Appellee.

The panel opinion filed and the judgment entered on October 5, 1989 are vacated, and appellee's suggestion for rehearing en banc is granted. The case is set for oral argument before the Court en banc at 8:30 a.m. on Friday, January 19, 1990, in the U.S. Court and Custom House in St. Louis, Missouri. Argument is limited to fifteen (15) minutes per side.

Counsel may simultaneously file, within thirty (30) days of the date of this order, supplemental briefs which are not duplicative of the briefs originally filed. The supplemental brief should not exceed fifteen (15) pages in length.

December 7, 1989.

Order entered at the Direction of the Court:

/s/ Robert D. St. Vrain. Clerk, U.S. Court of Appeals, Eighth Circuit.